Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   MNDC

Introduction

This hearing was convened on the tenants' application of October 31, 2012 seeking a monetary award for damage or loss after the rental unit was rendered uninhabitable following a water intrusion.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation and, if so, in what amount?

Background and Evidence

This tenancy began on August 1, 2011 and ended on September 17, 2012. Rent was $850 per month and the landlords held a security deposit of $425.

The tenancy ended as the result of a water intrusion into the ground floor of the rental unit reported by the tenants to the landlord on September 9, 2012. The landlord first called a plumber who was unable to locate the leak and a restoration company was called in to deal with the water. For a time it appeared as though the leak had stopped, but the tenants advised the landlord on September 12, 2012 that it had resumed.

Subsequently, with efforts by the water district, the plumber and the restoration company, it was determined that the problem was a water main that would require extensive repair including breaking up the cement floor.

The landlord arranged and paid for emergency shelter for the tenants to begin on September 14, 2012 which didn't materialize. The landlord stated that she had advised the tenants of the arrangement at 6 p.m., but they had not arrived at the hotel until 11 p.m. The check in was thwarted by an apparent combination of miscommunication and the tenants' lack of a credit card, although the hotel had been prepaid by the landlord's credit card. The tenants returned to the rental unit and slept upstairs that night.

When matters were straightened out, the tenants returned to the hotel for the next three nights.

On September 17, 2012, the landlord wrote to the tenants advising that the repairs to the rental unit would take a minimum of six to eight weeks work before it could be ready for occupancy and that the rental agreement was frustrated.

The landlord stated that, in an effort to soften the desperate situation faced by the tenants, which included the imminent arrival of a new child, they would return all of the rent for September 2012 which they did by cheque issued September 17, 2012. The letter also stated that the landlord would also permit the tenants to store their furnishings in the upper portion of the unit the end of the month and would return the security deposit when the furnishings were removed. The tenants stayed with friends, to whom they paid $450, until the end of the month when they moved into a new rental unit.

In addition to the cost of over $25,000 cost to repair the rental unit and loss of rent for three months, the landlord submitted receipts for $470.83 for the hotel costs and $600 in cleaning costs.

The tenants seek monetary compensation of $2,000.

Analysis

Section 92 of the *Act* states that the doctrine of frustration applies to rental agreements. The doctrine of frustration is a legal principal that allows a contract to be dissolved when events beyond the control of the parties make it physically impossible for the contract to be continue.

In the present matter, I find that the landlord had no control over the broken water main and I concur that the rental agreement was frustrated as of September 17, 2012 when it was determined that the rental unit was not fit for occupancy and would remain so for several weeks.

I further find that the landlord met or exceeded the obligation to the tenants under the doctrine of frustration. The application is dismissed on its merits.

Conclusion

Having found that the rental agreement ended due to frustration, the application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 29, 2013

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Residential Tenancy Branch